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6 UNITED STATES DISTRICT COURT FOR THE  
7 WESTERN DISTRICT OF WASHINGTON  
8 AT SEATTLE  
9

10 UNITED STATES OF AMERICA,  
11 Plaintiff,

NO. CR17-149RSM

**PLEA AGREEMENT**

12  
13 v.

14  
15 WIL CASEY FLOYD,  
16 Defendant.

17  
18 The United States of America, by and through Annette L. Hayes, United States  
19 Attorney for the Western District of Washington, and Todd Greenberg and Thomas M.  
20 Woods, Assistant United States Attorney for said District, Defendant, WIL CASEY  
21 FLOYD, and his attorney, Lawrence A. Hildes, enter into the following Agreement,  
22 pursuant to Federal Rule of Criminal Procedure 11(c):

23 1. **The Charge.** Defendant, having been advised of the right to have this  
24 matter tried before a jury, agrees to waive that right and enter a plea of guilty to the  
25 following charge contained in the Indictment:

26 *Unlawful Possession of a Destructive Devices*, as charged in Count 1, in  
27 violation of Title 26, United States Code, 5861(d) and 5845(a)(8);

1 By entering the plea of guilty, Defendant hereby waives all objections to the form  
 2 of the charging document. Defendant further understands that before entering his plea of  
 3 guilty, he will be placed under oath. Any statement given by Defendant under oath may  
 4 be used by the United States in a prosecution for perjury or false statement.

5 2. **Elements of the Offense.** The elements of the offense of *Unlawful*  
 6 *Possession of a Destructive Device*, as charged in Count 1, are as follows:

- 7 a. First, the Defendant knowingly possessed a destructive device, as  
 8 that term is defined in Title 26, United States Code, Section  
 9 5845(a)(8), that is, an explosive or incendiary device; and
- 10 b. Defendant did not register the device in the National Firearms  
 11 Registration and Transfer Record.

12 3. **The Penalties.** Defendant understands that the statutory penalties for the  
 13 offense of *Unlawful Possession of a Destructive Device*, as charged in Count 1, are as  
 14 follows: imprisonment for up to ten (10) years, a fine of up to \$10,000, a period of  
 15 supervision following release from prison of up to three (3) years, and a special  
 16 assessment of one hundred dollars (\$100.00). If Defendant receives a sentence of  
 17 probation, the probationary period could be up to five (5) years. Defendant agrees that  
 18 the special assessment shall be paid at or before the time of sentencing.

19 Defendant understands that supervised release is a period of time following  
 20 imprisonment during which he will be subject to certain restrictions and requirements.  
 21 Defendant further understands that if supervised release is imposed and he violates one or  
 22 more of its conditions, Defendant could be returned to prison for all or part of the term of  
 23 supervised release that was originally imposed. This could result in Defendant's serving  
 24 a total term of imprisonment greater than the statutory maximum stated above.

25 Defendant understands that in addition to any term of imprisonment and/or fine  
 26 that is imposed, the Court may order him to pay restitution to any victim of the offense,  
 27 as required by law.

Defendant agrees that any monetary penalty the Court imposes, including the special assessment, fine, costs, or restitution, is due and payable immediately and further agrees to submit a completed Financial Statement of Debtor form as requested by the United States Attorney's Office.

4. **Rights Waived by Pleading Guilty.** Defendant understands that by pleading guilty, he knowingly and voluntarily waives the following rights:

- a. The right to plead not guilty and to persist in a plea of not guilty;
- b. The right to a speedy and public trial before a jury of his peers;
- c. The right to the effective assistance of counsel at trial, including, if Defendant could not afford an attorney, the right to have the Court appoint one for him;
- d. The right to be presumed innocent until guilt has been established beyond a reasonable doubt at trial;
- e. The right to confront and cross-examine witnesses against Defendant at trial;
- f. The right to compel or subpoena witnesses to appear on his behalf at trial;
- g. The right to testify or to remain silent at trial, at which trial such silence could not be used against Defendant; and
- h. The right to appeal a finding of guilt or any pretrial rulings.

5. **United States Sentencing Guidelines.** Defendant understands and acknowledges that, at sentencing, the Court must consider the sentencing range calculated under the United States Sentencing Guidelines, together with the other factors set forth in Title 18, United States Code, Section 3553(a), including: (1) the nature and circumstances of the offense; (2) the history and characteristics of the defendant; (3) the need for the sentence to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense; (4) the need for the sentence to afford adequate deterrence to criminal conduct; (5) the need for the sentence to protect the public from further crimes of the defendant; (6) the need to provide the defendant

1 with educational and vocational training, medical care, or other correctional treatment in  
 2 the most effective manner; (7) the kinds of sentences available; (8) the need to provide  
 3 restitution to victims; and (9) the need to avoid unwarranted sentence disparity among  
 4 defendants involved in similar conduct who have similar records. Accordingly,

5 Defendant understands and acknowledges that:

6 a. The Court will determine the applicable Sentencing Guidelines range at the  
 7 time of sentencing;

8 b. After consideration of the Sentencing Guidelines and the factors in  
 9 18 U.S.C. 3553(a), the Court may impose any sentence authorized by law, up to the  
 10 maximum term authorized by law;

11 c. The Court is not bound by any recommendation regarding the sentence to  
 12 be imposed, or by any calculation or estimation of the Sentencing Guidelines range  
 13 offered by the parties or the United States Probation Department, or by any stipulations  
 14 or agreements between the parties in this Plea Agreement; and

15 d. Defendant may not withdraw a guilty plea solely because of the sentence  
 16 imposed by the Court.

17 6. **Ultimate Sentence.** Defendant acknowledges that no one has promised or  
 18 guaranteed what sentence the Court will impose.

19 7. **Statement of Facts.** The parties agree on the following facts. Defendant  
 20 admits he is guilty of the charged offense.

21 On May 1, 2016, Wil Floyd manufactured six Molotov cocktail devices at  
 22 his residence in Seattle, Washington. Floyd personally gathered the  
 23 materials used to make the Molotov cocktails, including beer bottles,  
 24 gasoline, and tampons for use as ignition wicks. Floyd placed the Molotov  
 25 cocktails in a black bag and carried the bag to the "May Day" protests in  
 26 downtown Seattle. Floyd was wearing all black clothing at the protest,  
 27 including a black hood and a gas mask.

1 During the protest, Floyd threw five of the Molotov cocktails at  
 2 approaching Seattle Police Department officers. Floyd did not light the  
 3 Molotov cocktails prior to throwing them at the officers. However, one of  
 4 the Molotov cocktails shattered on the ground and combusted with a police  
 5 flash-bang device, causing injuries to a police officer. Floyd then discarded  
 6 the black bag containing one remaining Molotov cocktail device, took off  
 his black clothing, and departed the area prior to being apprehended by  
 police officers.

7 On April 20, 2017, Floyd was interviewed by law enforcement officers  
 8 about the events of May 1, 2016. At the outset of the interview, Floyd was  
 9 provided with *Miranda* warnings and signed an Advice of Rights waiver  
 10 form. During the interview, Floyd admitted that: it was his idea to  
 11 manufacture the Molotov cocktails and he researched it over the Internet;  
 12 he personally gathered all of the materials to construct the Molotov  
 13 cocktails; he participated in manufacturing the Molotov cocktails, and  
 specifically noted his role was to install the wicks; he carried and possessed  
 the bag containing the six Molotov cocktails during the May Day protest;  
 and he threw the unlit Molotov cocktails at the police during the protest.

14 The above-referenced Molotov cocktails have been certified by forensic  
 15 examiners as "destructive devices" under federal law. Floyd does not have  
 16 any items registered to him under the National Firearms Registration and  
 Transfer Record.

17 The parties agree that the Court may consider additional facts contained in  
 18 the Presentence Report (subject to standard objections by the parties) and/or  
 19 that may be presented by the United States or Defendant at the time of  
 20 sentencing, and that the factual statement contained herein is not intended  
 21 to limit the facts that the parties may present to the Court at the time of  
 sentencing.

22 8. **Sentencing Factors.** The parties agree that the following Sentencing  
 23 Guidelines provisions apply to this case:

24 A base offense level of 18, pursuant to USSG § 2K2.1(a)(5), because the  
 25 offense involved a "firearm" described in 26 U.S.C. § 5845(a), that is, a  
 26 destructive device;

27 A two-level upward adjustment, pursuant to USSG § 2K2.1(b)(1)(A),  
 because the offense involved between three and seven destructive devices;

1 A two-level upward adjustment, pursuant to USSG § 2K2.1(b)(3)(B),  
2 because the offense involved a destructive device;

3 The United States acknowledges that if Defendant qualifies for an  
4 acceptance of responsibility adjustment pursuant to USSG § 3E1.1(a), and  
5 if the offense level is sixteen (16) or greater, ~~the~~<sup>his</sup> total offense level should  
6 be decreased by three (3) levels pursuant to USSG § 3E1.1(a) and (b),  
7 because he has assisted the United States by timely notifying the authorities  
8 of Defendant's intention to plead guilty, thereby permitting the United  
9 States to avoid preparing for trial and permitting the Court to allocate its  
10 resources efficiently.

11 The parties agree they are free to present arguments regarding the applicability of  
12 all other provisions of the United States Sentencing Guidelines. Specifically, the  
13 government will advocate for the application of an additional four-level upward  
14 adjustment under USSG § 2K2.1(6)(B), based on the defendant possessing the  
15 destructive devices in connection with another felony offense, that is, Assault in the Third  
16 Degree under the Revised Code of Washington. Defendant understands that at the time  
17 of sentencing, the Court is free to reject any stipulated adjustments, and is further free to  
18 apply additional downward or upward adjustments in determining Defendant's  
19 Sentencing Guidelines range.

20 **9. Agreement as to Sentencing Recommendation.** The government will  
21 recommend a sentence no higher than 37 months. Defendant is free to recommend any  
22 sentence. Defendant understands that these are only the recommendation of the parties,  
23 and that the Court is free to accept or reject the recommendations.

24 **10. Non-Prosecution of Additional Offenses.** As part of this Plea Agreement,  
25 the United States Attorney's Office for the Western District of Washington agrees not to  
26 prosecute Defendant for any additional offenses known to it as of the time of this  
27 Agreement that are based upon evidence in its possession at this time, and that arise out  
28 of the conduct giving rise to this investigation. In this regard, Defendant recognizes the  
United States has agreed not to prosecute all of the criminal charges the evidence



1 establishes were committed by Defendant solely because of the promises made by  
2 Defendant in this Agreement. Defendant agrees, however, that for purposes of preparing  
3 the Presentence Report, the United States Attorney's Office will provide the United  
4 States Probation Office with evidence of all conduct committed by Defendant.  
5 Defendant agrees that any charges to be dismissed before or at the time of sentencing  
6 were substantially justified in light of the evidence available to the United States, were  
7 not vexatious, frivolous or taken in bad faith, and do not provide Defendant with a basis  
8 for any future claims under the "Hyde Amendment," Pub. L. No. 105-119 (1997).

9       **11. Forfeiture of Firearms or Contraband.** Defendant also agrees that if  
10 any law enforcement agency seized any firearms or any other illegal contraband that was  
11 in Defendant's direct or indirect control, Defendant consents to the administrative  
12 forfeiture, official use, and/or destruction of said firearms or contraband by any law  
13 enforcement agency involved in the seizure of these items.

14       **12. Breach, Waiver, and Post-Plea Conduct.** Defendant agrees that if  
15 Defendant breaches this Plea Agreement, the United States may withdraw from this Plea  
16 Agreement and Defendant may be prosecuted for all offenses for which the United States  
17 has evidence. Defendant agrees not to oppose any steps taken by the United States to  
18 nullify this Plea Agreement, including the filing of a motion to withdraw from the Plea  
19 Agreement. Defendant also agrees that if Defendant is in breach of this Plea Agreement,  
20 Defendant has waived any objection to the re-institution of any charges in the Indictment  
21 that were previously dismissed or any additional charges that had not been prosecuted.  
22 Defendant further understands that if, after the date of this Agreement, Defendant should  
23 engage in illegal conduct, or conduct that is in violation of the conditions of release  
24 (examples of which include, but are not limited to: obstruction of justice, failure to appear  
25 for a court proceeding, criminal conduct while pending sentencing, and false statements  
26 to law enforcement agents, the Pretrial Services Officer, Probation Officer, or Court), the  
27 United States is free under this Agreement to file additional charges against Defendant or

1 to seek a sentence that takes such conduct into consideration by requesting the Court to  
2 apply additional adjustments or enhancements in its Sentencing Guidelines calculations  
3 in order to increase the applicable advisory Guidelines range, and/or by seeking an  
4 upward departure or variance from the calculated advisory Guidelines range. Under  
5 these circumstances, the United States is free to seek such adjustments, enhancements,  
6 departures, and/or variances even if otherwise precluded by the terms of the plea  
7 agreement.

8       **13. Waiver of Appeal.** As part of this Plea Agreement and on the condition  
9 that the Court imposes a custodial sentence that is within or below the Sentencing  
10 Guidelines range (or the statutory mandatory minimum, if greater than the Guidelines  
11 range) that is determined by the Court at the time of sentencing, Defendant waives to the  
12 full extent of the law:

13       a. any right conferred by Title 18, United States Code, Section 3742 to appeal  
14 the sentence, including any restitution order imposed; and

15       b. any right to bring a collateral attack against the conviction and sentence,  
16 including any restitution order imposed, except as it may relate to the effectiveness of  
17 legal representation.

18       Furthermore, this waiver does not preclude Defendant from bringing an  
19 appropriate motion pursuant to 28 U.S.C. 2241, to address the conditions of his  
20 confinement or the decisions of the Bureau of Prisons regarding execution of sentence.

21       If Defendant breaches this Plea Agreement at any time by appealing or collaterally  
22 attacking (except as to effectiveness of legal representation) the conviction or sentence in  
23 any way, the United States may prosecute Defendant for any counts, including those with  
24 mandatory minimum sentences, that were dismissed or not charged pursuant to this Plea  
25 Agreement.



14. **Voluntariness of Plea.** Defendant agrees that Defendant has entered into this Plea Agreement freely and voluntarily and that no threats or promises, other than the promises contained in this Plea Agreement, were made to induce Defendant to enter this plea of guilty.

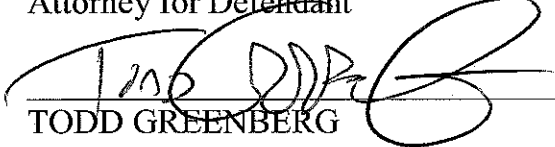
15. **Statute of Limitations.** In the event this Agreement is not accepted by the Court for any reason, or Defendant has breached any of the terms of this Plea Agreement, the statute of limitations shall be deemed to have been tolled from the date of the Plea Agreement to: (1) thirty (30) days following the date of non-acceptance of the Plea Agreement by the Court; or (2) thirty (30) days following the date on which a breach of the Plea Agreement by Defendant is discovered by the United States Attorney's Office.

16. **Completeness of Agreement.** The United States and Defendant acknowledge that these terms constitute the entire Plea Agreement between the parties. This Agreement binds only the United States Attorney's Office for the Western District of Washington. It does not bind any other United States Attorney's Office or any other office or agency of the United States, or any state or local prosecutor.

Dated this 22<sup>nd</sup> day of FEBRUARY, 2018.

  
WIL CASEY FLOYD  
Defendant

  
LAWRENCE A. HILDES  
Attorney for Defendant

  
TODD GREENBERG  
THOMAS M. WOODS  
Assistant United States Attorneys